

IN THE MATTER OF THE HEALTH PROFESSIONS ACT, R.S.A. 2000, c.H-7;
AND IN THE MATTER OF A HEARING INTO THE CONDUCT OF [REDACTED], A
REGULATED MEMBER OF THE ALBERTA COLLEGE OF SOCIAL WORKERS (the "ACSW");
AND INTO THE MATTER OF COMPLAINTS BY [REDACTED]
PURSUANT TO S. 77(a) OF THE HEALTH PROFESSIONS ACT;

DECISION OF THE HEARING TRIBUNAL

1. Hearing

A Hearing Tribunal was held virtually using WebEx on May 6, 2021 regarding this matter. Those participating in the hearing were:

Members of the Hearing Tribunal:

James Lees, Chair, Public Member
Melissa Engdahl, RSW
Sharon Long, RSW
Pat Matusko, Public Member

Others Participating:

Sheryl Pearson, Complaints Director, ACSW
Karen Smith Q.C., Counsel to Complaints Director
[REDACTED] RSW, Investigated Member
[REDACTED] Complainant
Vicki Georgoulas, Court Reporter

The Hearing Tribunal was assisted by Blair Maxston Q.C., Independent Legal Counsel in the drafting of its decision.

2. Preliminary Matters

The Parties acknowledged that the Hearing Tribunal is properly constituted and is being convened in accordance with the Health Professions Act (the "Act"). There were no objections to the jurisdiction or the composition of the Hearing Tribunal, no objections to the use of WebEx technology, and no preliminary applications or objections filed.

All members of the Hearing Tribunal confirmed that they are unaware of any bias or conflict of interest with respect to this matter. There were no requests to hold this hearing or a portion of it in camera (closed to the public). All those present were reminded that the use of any unauthorized video and/or recording devices is not allowed during this hearing.

[REDACTED] confirmed that he is aware of his right to legal representation, however, he was not represented by counsel during this hearing.

The hearing proceeded by way of an Admission of Unprofessional Conduct document ("Admission of Unprofessional Conduct") pursuant to section 70(1) of the *Act* and a Consent Order ("Consent Order"), including an Agreed Statement of Facts (the "Agreed Statement of Facts") and jointly proposed Orders as to Sanctions.

Allegations

The Amended Notice of Hearing dated May 4, 2021 (Exhibit #1) contained the following allegations:

Professional Responsibilities:

1. That you referred vulnerable clients from your employment at MH {Misericordia Hospital} to an unlicensed and unstaffed group home (Holy Trion).
2. That you referred patients with significant health needs to Holy Trion when it was not properly equipped to meet the needs of the patients.

Such conduct constitutes a contravention of B.3(a), B.11(a) and E.1(a)(c) of the Standards of Practice 2019 and Value 4 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i)(ii) and (xii) of the *Health Professions Act*.

Boundaries:

3. That you provided your phone number to the clients at Holy Trion after discharge from MH acting as an emergency contact for the group home.
4. That you put your name on the chart notes at the group home on one of your visits.
5. That you became the de facto emergency contact for several of the clients you referred to Holy Trion Group Home.

Such conduct constitutes a contravention of B.2(c), B.3(a), and B.10(c) of the Standards of Practice 2019, Value 4 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i)(ii) and (xii) of the *Health Professions Act*.

Breach of Order of the Hearing Tribunal:

6. That in a breach of the Orders of the Hearing Tribunal of May 7, 2019 you provided tenancy to a patient of MH.

"Reasons for Decision on Sanctions:

██████████ is prohibited from providing any tenancy to any client or individual by which contact occurred by virtue of his position as a social worker (unless he is the owner/operator of an approved licensed facility)".

Such conduct constitutes a contravention of s. 1(1)(pp)(viii) of the *Health Professions Act*.

Employment Responsibilities:

7. That you failed to be responsible to your employer and your employment responsibilities with which included:
 - Being late for employment shifts;
 - Failing to attend at your shift on January 21, 2021 without an explanation;
 - Failing to submit your service logs for the period of August to October 2020, when requested; and

- Failing to provide adequate explanation regarding the aforementioned concerns to management when requested.

Such conduct constitutes a contravention of G.3(a) of the Standards of Practice 2019 and value 4 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i)(ii) and (xii) of the *Health Professions Act*.

Such further and other allegations of unprofessional conduct as may be heard at the hearing of this matter and upon which you shall be provided notice.

3. Background

Counsel for the Complaints Director, Ms. Smith, addressed the hearing, noting that the hearing was to be conducted by way of a Consent Order, and no witnesses would be called to give evidence through testimony. She confirmed that [REDACTED] would not be represented by counsel during the hearing.

Ms. Smith submitted a number of documents to be entered into evidence as exhibits. These were:

Exhibit #1 – Amended Notice of Hearing

Exhibit #2 – Amended Notice To Attend

Exhibit #3 – Investigation Report For Complaints #20.11 & #20.19

Exhibit #4 – Acknowledgment of Notice of Service – Statutory Declaration

Exhibit #5 – Admission of Unprofessional Conduct

Exhibit #6 – Consent Order, including Agreed Statement of Facts and Proposed Orders as to Sanctions

Exhibit #7 - Letter to Sheryl Pearson dated November 24, 2020

Exhibit #8 Letter from Covenant Health to [REDACTED] dated February 16, 2021 and letter from the employer to the College, also dated February 16, 2021.

Exhibit #9 Reasons For Decision from Hearing Tribunal held March 8, 2019; Mr. [REDACTED] was the investigated member during this hearing.

The exhibits were entered with the consent of [REDACTED]

Ms. Smith provided background as to the conduct leading to the complaint and charges against [REDACTED], including reference to the complaints received by the College, the Investigation conducted, and discussions leading to the Admission of Unprofessional Conduct and the Consent Order.

The Hearing Tribunal was advised that a meeting was held on April 13, 2021 between Ms. Pearson, Ms. Smith, and [REDACTED]. During this meeting, a dialogue was held about the consequences and the impact of [REDACTED] actions. This meeting was successful in reaching agreement on reducing the number of allegations from the original seven (7) to three (3) allegations listed under Agreed Findings (Allegations 1, 5 & 7), and [REDACTED] accepted responsibility for his actions described in these three allegations. One of the allegations

withdrawn by the ACSW alleged a Breach of Order of the Hearing Tribunal (Exhibit #9), specifically "that in a breach of the Orders of the Hearing Tribunal of May 7, 2019 you provided tenancy to a patient of MH."

As a result of the meeting held on April 13, 2021, [REDACTED] and the ACSW agreed to proceed with a consent hearing. [REDACTED] agreed to and signed an Admission of Unprofessional Conduct (Exhibit #5) and a Proposed Consent Order (Exhibit #6). The Consent Order includes an Agreed Statement of Facts, Agreed Findings, Acknowledgment of Responsibility, and Orders As To Sanctions (proposed), and was signed by [REDACTED] on May 5, 2021.

The Hearing Tribunal reviewed the Exhibits filed, including the Investigation Report, for additional background, noting that:

- The Investigation Report (Exhibit #3) states that separate complaints were filed regarding [REDACTED] conduct by [REDACTED] both of whom were employed at the Misericordia Hospital. These complaints were received by the ACSW on March 12, 2020. Although both complaints were initially dismissed, they were subsequently reinstated by the Complaints Director following clarification from the complainants regarding [REDACTED]'s alleged conduct. [REDACTED] was advised by letter from Sheryl Pearson, ACSW Complaints Director dated March 17, 2020, that an investigator had been appointed to conduct an investigation. The investigation was initiated on March 17, 2020, by Ms. Ingrid Tenkate, RSW. The Investigation Report from Ms. Tenkate was completed on April 21, 2020 and received by the ACSW on April 27, 2020.
- The Investigation Report included a copy of a letter from [REDACTED] Supervisor, Transition Services and Social Work advising the ACSW that [REDACTED] was issued a five (5) day unpaid suspension on January 24, 2020, for professional misconduct and conflict of interest concerns. A copy of the suspension letter was attached.
- The ACSW later received a letter dated November 24, 2020, from [REDACTED] Supervisor, Transition Services and Social Work at the Misericordia Hospital (Exhibit #7) stating that a patient had described a concerning situation involving [REDACTED]. [REDACTED] referred to the ACSW Consent Order dated March 8, 2019, and the restrictions placed on [REDACTED] at that time.
- The ACSW subsequently received another letter from Ms. Johnson reporting that Mr. [REDACTED] had been suspended for one (1) day without pay effective February 17, 2021 resulting from concerns regarding his attendance and performance (Exhibit #8). A copy of the suspension letter was included.
- The Hearing Tribunal reviewed Exhibit #9, Reasons For Decision, arising from a Hearing Tribunal held on March 8, 2019, including a finding of unprofessional conduct by Mr. [REDACTED] and sanctions imposed on him as a result.

5. Submission by Ms. Smith Concerning the Allegations

Ms. Smith stated that the Hearing Tribunal's responsibilities are:

- To consider the facts of this matter, and determine whether the allegations are proven;
- If factually proven, consider whether the conduct rises to the level of unprofessional conduct as defined in s. 1(1)(pp) of the Act; and,
- If the finding is unprofessional conduct, to determine what sanctions are appropriate under s. 82 of the Act.

Ms. Smith noted that this matter is proceeding by way of a Consent Order, and [REDACTED] has agreed to an Admission of Unprofessional Conduct and a Consent Order which includes agreed facts, an acknowledgment of his conduct, and proposed orders on sanction.

The Consent Order (Exhibit #6) was reviewed by Ms. Smith, and includes the following:

a) Agreed Statement of Facts

The following facts have been agreed to by [REDACTED] and the Complaints Director:

1. [REDACTED] has been a Registered Social Worker with the Alberta College of Social Workers ("ACSW") since 2016.
2. At all material times [REDACTED] held the position of Discharge Planning at the Misericordia Hospital ("MH") in Edmonton.
3. [REDACTED] referred patients with significant health needs to Holy Trion when it was not equipped to meet the needs of those patients.
4. [REDACTED] provided his personal phone number to the clients at Holy Trion post discharge from MH and became the de facto emergency contact for the patients he referred to Holy Trion.
5. [REDACTED] failed in his responsibilities to his employer in the following ways:
 - Being late for employment shifts;
 - Failing to attend at his shift on January 21, 2021, without an explanation;
 - Failing to submit his service logs for the period of August to October 2020, when requested; and,
 - Failing to provide appropriate explanation regarding the aforementioned concerns to management when requested.

b) Agreed Findings

- Professional Responsibilities

1. That [REDACTED] referred patients with significant health needs to Holy Trion when it was not properly equipped to meet the needs of the patients.

Such conduct constitutes a contravention of B.3 (a), B.11(a) and E.1(a)(c) of the Standards of Practice 2019 and Value 4 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s.1(1)(pp)(i), (ii) and (xii) of the *Health Professions Act*.

- Boundaries

2. That [REDACTED] became the de facto emergency contact for several of the clients he referred to Holy Trion Group Home.

Such conduct constitutes a contravention of B.2(c), B.3(a) and B.10(c) of the Standards of Practice 2019 and Value 4 of the Code of Ethics 2005 and

constitutes unprofessional conduct pursuant to s.1(1)(pp)(i), (ii) and (xii) of the *Health Professions Act*.

- Employment Responsibilities

3. That [REDACTED] failed to be responsible to his employer and his employment responsibilities with which included:

- Being late for employment shifts;
- Failing to attend at his shift on January 21, 2021 without an explanation;
- Failing to submit his service logs for the period of August to October 2020 when requested; and,
- Failing to provide appropriate explanation regarding the aforementioned concerns to management when requested.

Such conduct constitutes a contravention of s. G.3(a) of the Standards of Practice 2019 and Value 4 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i),(ii) and (xii) of the *Health Professions Act*.

c. Acknowledgment of Responsibility

It is acknowledged by [REDACTED] and the ACSW that [REDACTED]'s conduct as described in the Agreed Statement of Facts constitutes unprofessional conduct as defined under the *Health Professions Act*.

6. Submissions by [REDACTED]

[REDACTED] made no submissions to the hearing with respect to the allegations against him.

7. Decision and Reasons

The Hearing Tribunal has considered the Agreed Facts in the Consent Order relating to the conduct of [REDACTED] and notes that [REDACTED] has agreed to these facts. The Hearing Tribunal accepts that the facts regarding his actions as submitted in the Consent Order are proven.

The Hearing Tribunal then considered whether [REDACTED] proven conduct rises to the level of unprofessional conduct pursuant to s. 1(1)(pp) of the *Act*, specifically:

- (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- (ii) contravention of this Act, a code of ethics or standards of practice;
- (xii) conduct that harms the integrity of the regulated profession.

The Hearing Tribunal noted that [REDACTED] had signed an Admission of Unprofessional Conduct (Exhibit #5) confirming his agreement that his conduct was unprofessional, and contravened s. G.3(a) of the Standards of Practice 2019 and value 4 of the Code of Ethics 2005. Section 70(1) of the *Act* permits an investigated member to make an admission of unprofessional conduct. An admission under section 70(1) of the *Act* must be acceptable in whole or in part to the Hearing

Tribunal. In the Admission of Unprofessional Conduct, [REDACTED] acknowledged that his conduct in the allegations constituted unprofessional conduct. As well, in the Consent Order, Mr. [REDACTED] acknowledged that he has accepted responsibility for his conduct. The Hearing Tribunal accepts his admission and agrees that his conduct in this matter meets the definition of unprofessional conduct in the *Health Professions Act*.

8. Joint Submission on Proposed Orders as to Sanctions

Following are the jointly proposed orders as to sanctions from the Consent Order (Exhibit #6):

"The Hearing Tribunal orders that the appropriate sanctions in the circumstances of this matter are as follows:

1. A reprimand shall be issued as against [REDACTED]
2. [REDACTED] shall be required to work under supervision for a further period of two (2) years within his employment. This supervision must be approved by the ACSW and there shall be reporting to the ACSW as required.
3. [REDACTED] shall be required to complete an additional 20 hours of continuing education (ten (10) hours on professional boundaries and ten (10) hours on communications) to be completed within one (1) year of the date of this order at his own cost and to be approved by the Complaints Director.
4. [REDACTED] shall be obliged to advise his employer of this decision of the Hearing Tribunal within 30 days of receipt of the written decision. [REDACTED] shall provide written confirmation to the ACSW regarding this notification.
5. [REDACTED] shall pay costs in the sum of One Thousand Dollars (\$1,000.00) within one (1) year of the date of this Order.
6. The Complaints Director shall maintain the discretion to suspend [REDACTED] permit to practice pending a Hearing should the Complaints Director, in his/her sole discretion, conclude that [REDACTED] has breached this Order.
7. There shall be publication of this Consent Order on a "no names" basis on the ACSW website.

a) Submission by Ms. Smith for Complaints Director

Ms. Smith stated that once a Hearing Tribunal makes a finding that a member's actions amount to unprofessional conduct, the Hearing Tribunal must then determine the appropriate sanction or orders pursuant to s.82 of the *Act*.

Ms. Smith also submitted that the primary purpose of legislation governing professionals is the protection of the public. The fundamental purpose of penalty orders for unprofessional conduct is (i) to ensure that the public is protected from acts of unprofessional conduct, and (ii) to ensure the integrity of the profession in the eyes of the public and fellow members is maintained. Other objectives include deterrence, rehabilitation of the member, integrity of the profession, and procedural fairness.

Ms. Smith referred to the penalty factors identified in *Jaswal v Newfoundland Medical Board [1986]* including the following:

1. The nature and gravity of the proven allegations;
2. The age and experience of the investigated member;

3. The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions;
4. The age and mental condition of the patient, if any;
5. The number of times the offending conduct was proven to have occurred;
6. The role of the investigated member in acknowledging what occurred;
7. Whether the investigated member has already suffered other serious financial or other penalties as a result of the allegations having been made;
8. The impact of the incident on the patient;
9. The presence or absence of any mitigating circumstances;
10. The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice;
11. The need to maintain the public's confidence in the integrity of the profession' and,
12. The range of sentences/sanctions in other similar cases.

Ms. Smith then spoke to those *Jaswal* factors applicable to this case:

1. Nature and Gravity – [REDACTED] conduct is on the lower end as opposed to being more serious;
2. Age and Experience – [REDACTED] is not a new member, being registered since 2016 and worked as a social worker prior to that;
3. Previous complaints or convictions – reference was made to a previous decision involving [REDACTED] (Exhibit #9); the issues in that decision are different but related – boundary breach, and blurring of boundaries; there is also the issue of employment responsibilities.
4. Age and condition of patient – this is significant, as [REDACTED] works with a vulnerable population;
5. Number of times – there was a pattern of behavior – this was not a one-time occurrence, and involved a number of individuals;
6. Role of the member in acknowledging – [REDACTED] has taken responsibility by admitting to his conduct and agreeing to the Consent process; this is a mitigating factor.
7. Other penalties incurred – [REDACTED] has received two unpaid suspensions from his employer – one on January 24, 2020 for five (5) days, and one on February 17, 2021 for one (1) day; this should be considered as a mitigating factor.
8. Impact on patient – [REDACTED] actions resulted in some distress for his clients;
9. Mitigating circumstances – none were noted other than those already identified;
10. Deterrence – includes both specific deterrence for the member and general deterrence for others working in the profession;
11. Public's confidence in the Integrity of the profession – as a self-regulated professional college, the ACSW has an important responsibility to ensure the Standards of Practice and Code of Ethics are upheld by its members, and appropriate disciplinary action is taken in cases where unprofessional conduct is proven;
12. Range of sentences in similar cases – none were presented

Ms. Smith stated that the proposed penalties in the Consent Order meet all of the sentencing objectives for this case. Ms. Smith spoke to the importance of giving the joint submission process and outcome due consideration, and the public interest test which says that a tribunal should not interfere with a joint submission unless it would bring the administration of justice into disrepute, or is otherwise contrary to the public interest. Neither of these are applicable to this joint submission. Ms. Smith stated the Consent Orders are both fair and appropriate, and urged the Hearing Tribunal to accept the joint submission as presented.

b) Submission by [REDACTED]

[REDACTED] addressed the Hearing Tribunal, briefly noting that he accepts the allegations are true, he accepts full responsibility for everything, and he participated in preparation of the joint submission.

8. Decision and Reasons for Sanctions

The Hearing Tribunal recognizes that its orders with respect to penalty must be fair, reasonable, and proportionate, taking into account the facts of the case. In this matter, the parties have agreed to proposed Orders As To Sanction in the Consent Order. While the parties have agreed to a joint submission on penalty, the Hearing Tribunal is not strictly bound by that submission. Nonetheless, as the decision-maker on penalty, the Hearing Tribunal should defer to a joint submission unless the proposed sanction is contrary to the public interest or brings the administration of justice into disrepute. Joint submissions make for a better process and engage the member in considering the outcome. A rejection of a carefully crafted agreement would undermine the goal of fostering cooperation through joint submissions and may significantly impair the Complaints Director's ability to enter into such agreements.

The Hearing Tribunal has reviewed the proposed orders, and the submissions by both parties (including the *Jaswal* factors) regarding the circumstances surrounding this matter. While recognizing that [REDACTED] decisions may have been made in challenging circumstances, he exercised bad judgment in making the decisions that he made instead of following established protocols, and employer policies and procedures.

With respect to the sanctions proposed, the Hearing Tribunal clarified that the two-year period specified in #2 is in addition to the period [REDACTED] has already completed arising from prior sanctions imposed on him. Sanction #3 has been included to provide [REDACTED] with additional time spent with professional interaction and oversight. Sanction #7 requires payment of \$1,000 towards the total costs incurred by the ACSW in undertaking the investigation and hearing tribunal.

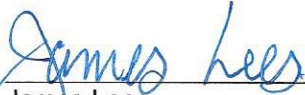
The Hearing Tribunal agrees with the joint submission on Orders as to Sanctions in the Consent Order, and therefore makes the following Order pursuant to s. 82 of the Act:

1. A reprimand shall be issued as against [REDACTED]
2. [REDACTED] shall be required to work under supervision for a further period of two (2) years within his employment. This supervision must be approved by the ACSW and there shall be reporting to the ACSW as required.
3. [REDACTED] shall be required to complete an additional 20 hours of continuing education (ten (10) hours on professional boundaries and ten (10) hours on communications) to be completed within one (1) year of the date of this order at his own cost and to be approved by the Complaints Director.
4. [REDACTED] shall be obliged to advise his employer of this decision of the Hearing Tribunal within 30 days of receipt of the written decision. [REDACTED] shall provide written confirmation to the ACSW regarding this notification.
5. [REDACTED] shall pay costs in the sum of One Thousand Dollars (\$1,000.00) within one (1) year of the date of this Order.
6. The Complaints Director shall maintain the discretion to suspend [REDACTED] permit to practice pending a Hearing should the Complaints Director, in his/her sole discretion, conclude that [REDACTED] has breached this Order.
7. There shall be publication of this Consent Order on a "no names" basis on the ACSW website.

As acknowledged in the signed Consent Order, the ACSW and [REDACTED] agree that there shall be no appeal from this Order, notwithstanding s. 87 of the *Act*.

DATED THIS 14th DAY OF JUNE, 2021, IN THE CITY OF EDMONTON ALBERTA

ALBERTA COLLEGE OF SOCIAL WORKERS



James Lees
Public Member, Chair
On behalf of the Hearing Tribunal